# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

DWAYNE KELLY SCOTT	)	
Claimant	)	
VS.	)	
	)	Docket No. 244,761
TOTAL INTERIORS	)	
Respondent	)	
AND	)	
	)	
CNA INSURANCE COMPANIES	)	
Insurance Carrier	)	

## ORDER

Respondent and its insurance carrier request review of an Order for Neutral Physician entered by Administrative Law Judge Robert H. Foerschler on May 19, 2000.

#### **A**PPEARANCES

Dennis L. Horner of Kansas City, Kansas, appeared on behalf of claimant. Timothy G. Lutz of Overland Park, Kansas, appeared on behalf of respondent and its insurance carrier.

#### Issues

Respondent requests the Board review the ALJ's order because there is a dispute concerning the compensability of the claim. Specifically, respondent alleges claimant failed to meet his burden of proving an accidental injury that arose out of and in the course of his employment with respondent and timely notice. The issue thus presented is whether the ALJ exceeded his jurisdiction by entering an order for an independent medical examination of claimant.<sup>1</sup> Although neither party questioned the Board's jurisdiction, also at issue is whether this appeal is from a final order. The Board's jurisdiction is limited to review of final orders except for appeals from a preliminary hearing order. This is not an appeal from an order for preliminary hearing benefits and the Board does not have jurisdiction unless the order is a final award or order.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup> K.S.A. 1999 Supp. 44-534a.

<sup>&</sup>lt;sup>2</sup> K.S.A. 1999 Supp. 44-551.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Judge Foerschler's May 19, 2000 order provides: "Glenn Amundson, M.D., is appointed as a neutral physician under K.S.A. 44-516 to examine claimant and report his findings as to whether his current back condition and complaints are related to his employment at Total Interiors, and the need for his return for additional needed treatment."

As stated, respondent argues the ALJ's order is improper because the claim is not compensable. But an order for an independent medical examination (IME) under K.S.A. 44-516 is not a finding of compensability. The ordered examination is not medical treatment. Thus, it is neither a preliminary hearing award of benefits entered under the preliminary hearing statute nor is it a final award. The Board has previously held that an order for an independent medical evaluation is an interlocutory order.<sup>3</sup>

Generally, a decision or order is final only when it resolves all issues between the parties and reserves no further question for future action. However, the Board has recognized an exception to this general rule.<sup>4</sup> In Skahan v. Powell, 8 Kan. App. 2d 204, 653 P.2d 1192 (1982), the Court of Appeals states three criteria whereby an order may be final even if it does not resolve all issues between the parties. The order may be final if it (1) conclusively determines the disputed question, (2) resolves an important issue completely separate from the merits of the action, and (3) is effectively unreviewable on appeal from a final judgment. In our view, however, an order referring a claimant for an IME does not satisfy these three criteria. The order will not conclusively determine the disputed questions of causation and the nature and extent of claimant's disability. Furthermore, it does not even determine the question concerning whether the order itself is proper because the independent medical examiner's report can be objected to at the time of the submission of the case and that issue can be determined by the ALJ at the time of award and reviewed on an appeal from that award, if necessary. The purpose of the ordered examination goes to the merits of the action in that the issue is the causation of claimant's injury. And, as stated, the questions concerning the propriety of the examination and the admissibility of the results of that examination are reviewable both at the time of submission to the ALJ and on appeal. The order, therefore, is interlocutory and not final and the Board is without jurisdiction to review the Order for Neutral Physician.

**WHEREFORE**, the Appeals Board dismisses this appeal leaving the Order for Neutral Physician in full force and effect.

## IT IS SO ORDERED.

<sup>&</sup>lt;sup>3</sup> See e.g., Kitchen v. Luce Press Clippings, Inc., WCAB Docket No. 228,213 (April 1999).

<sup>&</sup>lt;sup>4</sup> Rhodeman v. Moore Management, WCAB Docket No. 234,890 (Oct. 1999).

Dated this	day of July	, 2000.	
		BOARD MEMBER	
		BOARD MEMBER	
		BOARD MEMBER	

c: Dennis L. Horner, Kansas City, KS Timothy G. Lutz, Overland Park, KS Robert H. Foerschler, Administrative Law Judge Philip S. Harness, Director